

February 14, 2006



TRANSCRIPT
February 14, 2006

MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin



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1 [MUSIC]

2
3 Council President Leventhal,
4 Good morning everyone, happy Valentine's Day. I see that we don't have a invocation
5 today. So let us just rise for a moment of silence, please. Thank you very much. Let's
6 begin with general business. Do we have any calendar changes or agenda changes,
7 Ms. Lauer?

8
9 Linda Lauer,
10 We do. We have an addition to the Consent Calendar this morning to introduce a
11 supplemental appropriation for a Homeland Security grant that we received from the
12 Executive. Public hearing and action is scheduled for February 28th at 1:30. This
13 afternoon, after the public hearings, we've scheduled a briefing on cost calculations in
14 the FY '07-'12 CIP as requested by Public Safety yesterday. Immediately following that
15 there is a proposed closed session and that's to consult with staff or other individuals
16 about pending or potential litigation. The topic is the American Financial Services
17 Association, et al versus Montgomery County. Also just an announcement the hearing
18 planned for Thursday night that was going to be conducted by MFP on Bill 1-06:
19 Personnel Special Days of Commemoration. That's been continued to February 28th at
20 1:30 p.m. and all speakers will be heard at that time.

21
22 Council President Leventhal,
23 Great, and the gentleman who had signed up to testify has been notified?

24
25 Linda Lauer,
26 Has been notified, yes sir.

27
28 Council President Leventhal,
29 Very good, thank you very much.

30
31 Linda Lauer,
32 And we do have two petitions, one is from the parents of Walter Johnson High School
33 students supporting the modernization of the school, and then residents of Montgomery
34 County support the renovation of Gaithersburg Library.

35
36 Council President Leventhal,
37 Thank you. Okay, Consent Calendar...

38
39 Councilmember Denis,
40 Mr. President, I had my light on.

41
42 Council President Leventhal,
43 Mr. Denis -- a point of personal privilege for Mr. Denis.

44
45 Councilmember Denis,



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1 Thank you, on the petition... Not a personal privilege, on the petitions. I do have some of
2 the 140 individual letters that were sent to us from parents of students at Walter
3 Johnson High School about the modernization. And I'll be happy to share with my
4 colleagues and I look forward to a favorable consideration of that modernization along
5 with all of the others that are in queue.

6
7 Council President Leventhal,
8 Thank you, Mr. Denis, why don't you proceed now. I know you wanted to make remarks
9 concerning the 16th President of this country.

10
11 Councilmember Denis,
12 Thank you, Mr. President, I just wanted to say a few words, a couple days ago...

13
14 Unidentified Speaker
15 [INAUDIBLE]

16
17 Councilmember Denis,
18 No. No. No. A couple of days ago we commemorated the 197th birthday of Abraham
19 Lincoln, meaning that his bicentennial is coming on in three years. I personally think he
20 was the greatest president we ever had, the greatest American who ever lived, and
21 there is an enormous amount of interest in Lincoln, there always has been. Thousands
22 of books written. There are three out today that are best sellers, one by Doris Kearns
23 Goodwin, *A Team of Rivals*, about the Lincoln Cabinet. Another one that Lincoln's
24 melancholy, basically, is a very, very incredible book that I strongly recommend was the
25 subject of a 2-hour documentary on, it was either A&E or the History Channel, about
26 how Lincoln wrestled with his demons, what today might be considered almost clinical
27 depression, and worked through with hard work and humor, and things that he figured
28 out for himself. The other book that's out now is called *The Manhunt*. It's about basically
29 the assassination of Lincoln and the 12 days that followed until John Wilkes Booth was
30 cornered in a barn that was burned down in Virginia. Of course, right after he left Ford's
31 Theater he went over to Prince George's County and went on from there. But -- so there
32 is a tremendous interest in Abraham Lincoln and I think it's appropriate that a few words
33 be said on the occasion of his birthday two days past. Thank you, Mr. President.

34
35 Council President Leventhal,
36 Thank you very much, Mr. Denis. And thank you Mr. Lincoln. We have the Consent
37 Calendar before us now.

38
39 Councilmember Floreen,
40 Move approval.

41
42 Councilmember Praisner,
43 Second.

44
45 Council President Leventhal,



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1 Ms. Floreen has moved and Ms. Praisner has seconded approval of the Consent
2 Calendar. There are no requests to speak to the Consent Calendar so those -- is that a
3 request to speak to the Consent Calendar? Mr. Denis.

4
5 Councilmember Denis,

6 Yeah, thank you, Mr. President. On item 3F, which is Performance Pay for
7 Unrepresented Employees. As lead member for personnel I'd just like to say a few
8 words about this and to thank my colleagues on the Committee. The Chair, Ms.
9 Praisner, and a colleague, Mr. Andrews, for their work on this. This represents a fair
10 compromise and the Committee definitely added value to the proposal and the
11 regulation that was sent over by the Executive. We reviewed the recommendation
12 intensively and made changes which have been incorporated. The regulation
13 establishes lump sum performance based pay awards for employees who receive
14 annual performance ratings of Exceptional or Highly Successful Performance. It also
15 establishes longevity performance increments for employees whose salaries are at the
16 top of the pay range for their grade, who have 20 years of service and who have
17 received overall performance ratings of exceptional or Highly Successful the two most
18 recent consecutive years. I also wanted to thank my friend Joe Adler, Director of the
19 Department of Office of Human Resources, for working with the Committee to craft this
20 regulation and absolutely to thank profusely, Minna Davidson, our legislative staff for
21 her outstanding work on this important project. Thank you, Mr. President.

22
23
24 Council President Leventhal,
25 Thank you, Mr. Denis. Mr. Perez.

26
27 Councilmember Perez,
28 I wanted to briefly thank Man Cho for agreeing to serve on the Fire and Rescue
29 Commission. Today we will be confirming that appointment and he is a very
30 distinguished member of our community, and I'm looking forward to working with him on
31 this critical commission.

32
33 Council President Leventhal,
34 Okay, thank you. Those in favor of the Consent Calendar will signify by raising their
35 hands. And it is unanimous among those present. We will now take up -- we will now
36 move to Legislative Session. Do we have a Legislative Journal for approval?

37
38 Council Clerk,
39 There is no journal for approval.

40
41 Council President Leventhal,
42 All right, thank you, we have a bill to introduce. Bill 3-06, Consumer Protection -
43 Revisions. We need a motion to schedule the public hearing on March 7th.

44
45 Councilmember Praisner,



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1 No, you don't need a movement on a -- a motion on a bill.

2
3 Council President Leventhal,
4 Don't need it on a bill. Okay, I'm still learning. I'm trying to keep up here. So, a public
5 hearing will be held on March 7th. All right, and we now have action on a resolution to
6 amend the 10-year Comprehensive Water Supply and Sewerage Systems Plan. Is Mr.
7 Levchenko with us?

8
9 Councilmember Perez,
10 While he's doing that -- while Mr. Levchenko is getting up here, if I could just briefly
11 mention on the Consumer Protection Bill.

12
13 Council President Leventhal,
14 Feel free.

15
16 Councilmember Perez,
17 I wanted to thank folks in the County Executive's Office who have been working
18 diligently on this and Marc Hansen was somewhere. Marc and the people in the County
19 Attorney's Office have been working hard over the last -- we'll just say many months --
20 on a comprehensive, update and revision of Chapter 11 of the County Code. I think -- I
21 also learned during this process, again the value of the Advisory Committee which
22 offered, very, very critical input on things we can do to make sure that the new office
23 that's on the third floor of this building has all the tools necessary to carry out its job. So
24 this is another, I think, critically important step in our efforts to ensure that we're doing
25 our level best to protect consumers in Montgomery County. I want to thank Eric
26 Friedman, who's been shepherding this process from the outset, has done great work,
27 and I look forward to working with the County Executive and with this office and the
28 County Attorney's office as we move forward.

29
30 Council President Leventhal,
31 Okay, thank you. And now again we're on this multiuse systems issue. Chairwoman
32 Floreen will let us know how the T&E Committee felt about this issue.

33
34 Councilmember Floreen,
35 Thank you very much, Mr. President. If -- just to remind the Council, this is Mr. Knapp's
36 proposal to amend the 10-year Comprehensive Water Supply and Sewerage System
37 Plan for multiuse systems, which is really the second prong in our effort to make sure
38 development that occurs in the RDT zone is consistent with the rural character there.
39 The T&E Committee recommends approval of Mr. Knapp's resolution with just a few
40 word changes which you'll see on page 41 and -- Circle 41 and 42 of the packet.
41 Basically, what is proposed is that a gallon per day, a design capacity restriction will be
42 imposed on multiuse sewage disposal systems. This basically is proposed to be set at a
43 level of 600 gallons per residential unit that could be permitted on this size of a piece of
44 property. The examples there are as you recall, there is authorization -- under our
45 zoning restrictions in the rural density zones one unit per 25 acres is permitted. And



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1 basically the concept here is to estimate the sewage flow that would be expected from
2 such unit and then apply it to whatever size the property might be owned by the
3 applicant. The examples are provided in the staff back up here, I think, in terms of what
4 the design capacity might mean. On page 9, for example, if the acreage is 25 acres the
5 residential equivalency would be one home. We looked into the question of what is the
6 typical size of such a home would be and under the capable work of Mr. Jeff Zyontz
7 from the Park and Planning Commission, you will see his research on Circle 39, which
8 indicates -- which confirms Mr. Knapp's proposal to assume, the equivalency for a four-
9 bedroom home. That translates into 600 gallons of usage. So that a 50-acre property
10 would be allowed to be used -- support a sewage system up to 1,200 gallons per day
11 and so on and so forth. What we are proposing is that the amendment be clear that --
12 we're proposing to exempt current property owners of such systems with such uses.
13 We're proposing to exempt all agricultural uses as well as publicly owned or operated
14 uses. We spent some considerable time reviewing the history of this and the details and
15 I would say that I think the Committee recommendation here is to achieve and support a
16 rural environment based on consistent standards that really treat all uses in the same
17 way. And that's why the four-bedroom number seems to us to be appropriate. It is
18 content neutral, basically. It does not target one use over another. But it, in fact, is a
19 equivalency based on the scale really of existing development that we see in the RDT
20 zone. Using this approach I think will allow us to avoid the Doctrine of Unintended
21 Consequences in terms of our efforts to find reasonable controls for nonresidential,
22 nonagricultural uses in the RDT zone. So I do think that this proposal preserves the
23 rural character of our RDT zone and creates really a consistent and rationally based
24 approach to dealing with these on-site multiuse sewage disposal systems. I would also
25 note that we anticipate that we'd be looking at the issue of monitoring, inspection, and
26 reporting to be considered in our review of our triannual update -- right, Keith -- of the
27 water and septic sewage plan. Is there anything else I left out in this summary, Keith?

28
29 Keith Levchenko,

30 Just to clarify, we're talking about multiuse systems only in the RDT zone areas. And by
31 multiuse system we mean systems greater than 1,500 gallons per day. So the
32 equivalency cap that you were discussing, would not effect properties below that 1,500
33 at this time.

34
35 Councilmember Floreen,

36 Right, right, so that is the Committee recommendation, Mr. Knapp isn't here but I think
37 that the Council certainly heard significant testimony with respect to this at our public
38 hearing previously. And we recommend the resolution with the exemptions, as are
39 outlined on -- that Keith put together on Circle 41 and 42.

40
41 Keith Levchenko,

42 I just also wanted to note there were some very minor language revisions that one of
43 the staff attorneys suggested, which I will incorporate as well.

44
45 Councilmember Floreen,



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1 In addition to what we have in front of us, Keith?

2
3 Keith Levchenko,

4 In addition to what you have. Very minor having to do with consistency on Circle 42. Not
5 changing the intent or thrust of the language.

6
7 Councilmember Floreen,
8 Okay.

9
10 Councilmember Praisner,
11 Okay. Mr. Perez, you're next.

12
13 Councilmember Perez,

14 Yes, I don't know what the appropriate time is; I know there were a number of issues
15 that were mentioned beginning on page 5. So I think I will move ahead to the issue that
16 I raised, which was at the beginning -- at the bottom of page 7. The question presented
17 was should there be a hard cap? And the issue that I brought up, this is in my mind a
18 first cousin of the issue of the impervious caps. And part of the reason why I think the
19 Council did not end up supporting hard and fast caps in various areas was because,
20 when you have a impervious cap in the Doctrine of Intended -- or Unintended
21 Consequences it creates incentives to simply accumulate land and thereby getting
22 around the impervious cap. Similarly here, I'm concerned in the RDT zone that if we
23 don't have a hard cap you can also assemble property, and effectively build something
24 that is really out of character with the rural character of the RDT zone. Which was why I
25 offered a proposal in the Committee to have a hard cap of 5,000 gallons per day. The
26 reason I picked 5,000 was because that's the trigger point for MDE review and the
27 experts at MDE have made a judgment that at that point there are certain environmental
28 sensitivities in place that trigger heightened scrutiny at a state level. And so I believe
29 that having a 5,000 gallon per day limit will ensure that we have development that is
30 consistent with the character of the RDT zone. And I'll note parenthetically that we did
31 ask for and receive some data on what kind of facilities does a 5,000 gallon cap allow
32 you to build? And what I recall from our discussion was that it will allow you to build --
33 for instance if you wanted to build a church, it would allow you to build a church with a
34 partial kitchen facility and a sanctuary that would fit something like 715 or 714 people.
35 So, that's a pretty good sized facility for -- given the character of the RDT zone that
36 you're talking about. So I'm going to offer that cap again, here in the full Council, and so
37 the motion would be to add a hard cap of \$5,000...

38
39 [LAUGHTER]

40
41 Councilmember Perez,
42 5,000 gallons, we can call it dollars.

43
44 Councilmember Floreen,
45 It's 4,000, Tom.



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1
2 [LAUGHTER]

3
4 Councilmember Perez,
5 Yeah, 5,000, that's right.

6
7 Councilmember Silverman,
8 [INAUDIBLE]

9
10 Councilmember Perez,
11 That's right.

12
13 [LAUGHTER]

14
15 Councilmember Perez,
16 5,000 gallons per day.

17
18 Keith Levchenko,
19 No LLC intentions?

20
21 Council President Leventhal,
22 No, LLC. Okay, the motion has been made by Mr. Perez and seconded by Ms. Praisner,
23 and Mr. Silverman has turned his light off. Do you still want to speak, Tom?

24
25 Councilmember Perez,
26 No, I'm sorry.

27
28 Council President Leventhal,
29 Okay. Ms. Praisner.

30
31 Councilmember Praisner,
32 I'm happy that Mr. Perez offered this amendment. I had some general comments that I
33 wanted to make about these issues but since we're on an amendment I'll just come
34 back to that later, if it's okay.

35
36 Council President Leventhal,
37 Chairwoman Floreen.

38
39 Councilmember Floreen,
40 I wanted to say I don't think that the world will come to an end if such a cap is added but
41 I -- because basically, I think it's highly unlikely that activities, uses that consume more
42 than 200 acres, which is really what this is targeted at, are likely to be before us. But I
43 will just say that the challenge that I have with this is that it takes us out of the realm of
44 current consistency. It is -- it does not address current development patterns and I think
45 it subjects us to the challenge that we are looking at a relatively arbitrary number. What



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1 I liked about Mr. Knapp's proposal that's straightforward is that it is neutral and it
2 develops a consistency of treatment of all uses that doesn't subject us to the challenge
3 that we're targeting one use or another. What we are trying to do is to develop a rural --
4 make sure that the rural landscape that we see and enjoy continues to be a rural
5 landscape. And I think that it's a better approach to have a consistent standard that is
6 really neutral in terms of what it's attempting to achieve. Which is in a residential
7 equivalency that's based on some pretty good numbers out there. Based on what Mr.
8 Zyontz has told us and it's straightforward. It doesn't target one use over another. And
9 so, I just want to put that in the record. I think it's a better approach to achieve the same
10 result.

11
12 Council President Leventhal,
13 Mr. Silverman.

14
15 Councilmember Silverman,
16 Thank you, Mr. President. I want to support Mr. Perez's suggestion. I think we have
17 made a lot of progress in the last few months on the issue of the Ag Reserve. It certainly
18 is front and center in terms of the attention that is being paid to it. Not that it wasn't front
19 and center before, but there is a big difference between us talking about protecting the
20 Ag Reserve and actually taking the steps that are necessary to ensure that we will
21 continue to keep this crown jewel of planning as an example of what other jurisdictions
22 should be doing. It's real easy to chip away at these things. A project here, a project
23 there. Well, it's 93,000 acres, would it be a big deal if it's 92,000 acres? There's a real
24 slippery slope element to things. And I think for those of us who share the goal of
25 supporting smart growth in the County we have to continue to remain vigilant about the
26 Ag Reserve. It was created at a time when people didn't talk a lot about open space, but
27 that is a critical component now, I think, of our land use practices and we hope it's a
28 model for other jurisdictions to follow. And it also creates the opportunity, as I know our
29 colleagues have talked about in the past, of ensuring economic development for our
30 County that is not just about Marriott or Lockheed Martin or Discovery, but, in fact, about
31 the equine industry, about horticulture, about family farming, which still exists. And
32 those components of our heritage are critical to continue to have as examples of not
33 only what Montgomery County has been in the past but, in fact, what it can be in the
34 future. We took a major step in terms of our unanimous vote to prohibit water and sewer
35 for private institutional facilities. This is the second piece of the puzzle in terms of Mr.
36 Knapp's amendment and Mr. Perez's amendment to put a hard cap on a multigallon
37 system, I think that's important as well. Our joint Committees had extensive discussions
38 about the impervious cap issue which I assume will come to the full Council at some
39 point. And I know there are some folks working very hard to create the super TDR or
40 BLT program, however one wants to characterize it but...

41
42 Councilmember Praisner,
43 Hold the mayo.

44
45 Councilmember Silverman,



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1 Well, hold the bacon. So, I think it's a...

2
3 Councilmember Floreen,
4 [INAUDIBLE]

5
6 Councilmember Silverman,
7 [LAUGHTER] Well, I'm concerned about our kosher constituents, Nancy. But the point
8 is, we are trying as aggressively as possible to implement protections for the Ag
9 Reserve in a way that haven't really occurred since the original master plan that was
10 done 25 years ago and the creation of the TDR program. I'm hopeful that we'll be able
11 to do that. We've had -- we have land that's been preserved and privately held, and
12 through conservation easements, I think it's about 60,000 acres at this point. But 30,000
13 some acres is a lot of acres which could be turned into, in effect, "farmettes" out there in
14 the Ag Reserve. So I think this makes -- is another step towards that effort and I'm
15 looking forward to the discussion that I know we'll have about TDRs. So I'm very glad to
16 support this amendment. I'm glad to support Mr. Perez's amendment as well. Thank
17 you, Mr. President.

18
19 Council President Leventhal,
20 Thank you. Mr. Andrews.

21
22 Councilmember Andrews,
23 Thank you, Mr. President. Well I'm happy to support Mr. Perez's amendment also. I
24 think it's safe to say that if the Agricultural Reserve is ever lost it won't be in one fail
25 swoop it will be death by a thousand cuts and that is what we need to prevent. It will
26 take continued diligence and dedication and vigilance to ensure that the Ag Reserve
27 continues to thrive as an agricultural resource, which is its primary purpose, that's what
28 its set up for. And that it continues to evolve in a way that allows agriculture and
29 agricultural uses to continue to thrive. So, we need some flexibility in that but most of all
30 we need vigilance in protecting what it was established to be. And there will always be
31 attractive proposals that by themselves will be appealing and one can make the
32 argument that an individual proposal by itself will not have a substantial impact, but the
33 cumulative effect is what will eventually destroy the Agricultural Reserve unless we are
34 able to head that off. And that is the importance of the amendment proposed by my
35 colleague, Tom Perez, to ensure that there is not an unintended consequence of folks
36 buying more land in order to stay at the formula. But the absolute cap will prevent that
37 incentive from being exercised. So I'm very happy to support the amendment, I think
38 that the Council has taken some important steps recently, in November, by prohibiting
39 the expansion of sewer in the Ag Reserve with the exception of public health purposes.
40 And now this addressing of the multiuse systems in a way that I think will be effective
41 and comprehensive, and continue to ensure we have a Agricultural Reserve 100 years
42 from now as well as next year. Thank you.

43
44 Council President Leventhal,
45 Mrs. Praisner.



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Councilmember Praisner,

Well, since folks are commenting on more than just the amendment I thought I'd come back on and say that I was happy to second it, because I can count and 5,000 is where I think folks were. But my initial preference was at 4,000. Which I think is still consistent and has some room for growth and variability within the Ag Reserve. But given Mr. Perez's preference for 5,000, that cap is better than no cap at all. So, I will support it. I think there are other comments that need to be made though. We are talking about an amendment to the 10-year Comprehensive Water Supply and Sewerage System Plan. And I personally think that while we are focused on the Ag Reserve there are a lot of other issues that we need to focus on as well. And I hope that staff is doing some of the work that I've requested that deals with watersheds. Because the extension of water and sewer, while being -- the Ag Reserve has been protected does make all of the other large lots where water and sewer -- large areas of the County -- rural areas of the County -- where water and sewer was not -- or sewer was intended to go makes them even more vulnerable if we do not look at the imperviousness issues and the watershed issues, and the impacts on those watersheds some of which are already significantly stressed. So, while we look at the water and sewer system, plan, I think we need to review and continue to work on the issue of the impacts to the rural character of our County, where it is not intended that development occur. And development occurs higher than is intended when you extend sewer to those areas. The second point I would make is I couldn't agree more with Mr. Lechliders comments within the packet, that they are having difficulty in the agricultural community keeping up with us. And that what he means by that is that every few weeks there is another issue in front of the Council. And I think that's good, and that's bad. Because I hope that we don't rest on our laurels and I hope that we look comprehensively at the issues that are in front of us. And the issues again relate to agriculture and it's more than protecting the land, when we look at the issue the agriculture and it's the support and systems. It's also, as I said, an issue of the environment and impacts on neighborhoods -- rural neighborhoods. So, I think that as we continue to look at these issues, one; we need to remember the other large lots areas, rural areas of the County. We need to look at our comprehensive plan's relationship as far as our expectations for those areas and the fact that they do not call for extending water and sewer. We also need to look at the imperviousness issues in those areas and I think we need to look at agriculture in a comprehensive way. We've made significant strides, but -- protecting the land is important but it's only the first step as far as I'm concerned on the issue of preserving agriculture. And, I support this but I hope we can move aggressively on those other issues working cooperatively with the affected communities.

Council President Leventhal,

Thank you, Mrs. Praisner. I could not agree with you more. And I was actually, I also had dog eared the page in which George Lechliders wrote that "Over the past few months the agricultural community has become very worried and perplexed over the numerous legislative matters that have come before us. We understand that many of these initiatives have been pushed through quickly as a result of pending projects, but



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1 this environment is not conducive to our way of thinking. We believe a slower more
2 methodical process should be in place for our elected officials to deliberate on
3 legislation that will have future implications on equity and property rights. We are doing
4 our best to keep up with you, but you should know that some individuals believe it's
5 nearly impossible to be heard or participate in the public process." Now, since I have
6 gotten here -- on the Council there have been a number of issues affecting the Ag
7 Reserve. And I have tried as best I can to look to the Farm Bureau and to the Ag
8 Advisory Board as sort of a primary point of reference for me as I sought to determine
9 what made the most sense for an area that is supposed to be dedicated to the
10 preservation of agriculture. And although that may not uniformly be the guide, I do take
11 very, very seriously the voices of the Farm Bureau and the Ag Advisory Board on these
12 matters. And to the extent that there are farmers watching this or listening to this debate
13 who may feel that the Farm Bureau or the Ag Advisory Board don't represent them, I
14 would encourage farmers to find a way to participate in those bodies because, at least
15 from my perspective, to the extent that we have dually constituted groups and boards
16 that speak for farmers I'm going to rely very, very heavily on their judgment with respect
17 with how to preserve farms and how to preserve agriculture. That was the basis on
18 which I cast my vote when the equestrian issue came up a couple of years ago. I took
19 the advise of the farmers very, very seriously on the issue of a PIF policy for water and
20 sewer, and we now have Mr. Knapp's proposal before us, and Mr. Perez's amendment
21 to it, Mr. Knapp, which would impose a hard cap of 5,000 gallons. The Farm Bureau has
22 not opined on Mr. Perez's amendment, which I will support with some reservation, and I
23 speak about that more in just a moment, but they have come out squarely in favor of the
24 general proposal to have a multiuse system use water in a quantity that would be
25 equivalent to what the residential use would be if the land were developed for residential
26 purposes. Which as others had said, serves us to maintain the low-density rural
27 character that the farmers of the Ag Reserve intended when this great resource was
28 established back in 1980. Now, let me say that I'm sympathetic to Mr. Lechliden. I'm
29 enormously sympathetic to our religious community and the Pastors that feel that on
30 these votes in this zone we are just consistently giving them the back of our hand, and
31 indeed we are. But let me say this, I will work with the Derwood Bible Church as I am
32 now working with Bethel World Outreach Church to assist them to cope with the
33 situation that had been created by the decision that the Council is about to make. I
34 believe we're headed into the right direction in terms of preserving this zone, and
35 maintaining the very low-density rural character of this zone. I will say, and my record
36 on votes in other zones has been, it's very difficult for me to imagine a better use for
37 land than a opportunity for people to pray and express their faith and pursue good
38 morals and good values and all of the benefits that come from the ministry of the
39 Derwood Bible Church and the other religious institutions in this community. One of the
40 greatest pleasures of my job as an elected official is to worship with a multiplicity of
41 denominations here in this diverse County. And I get great spiritual satisfaction, I get
42 great political benefit, and it means a great deal to me to be able to reach out to these
43 different communities. And it pains me that I'm about to vote against Derwood Bible
44 Church, and that I had to vote against Bethel World Outreach Ministry. I don't take the
45 votes lightly, I take them very, very seriously and we do it because of this very special



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1 zone which is unique in the County, and in many ways unique in the United States, and
2 our County has won national awards, farm land preservation awards, open space
3 preservation awards. And so this is a very special and unique zone and I believe we're
4 going to continue to maintain that. But let me say to Mr. Zyontz, first of all, I appreciated
5 you're response to my inquiry with respect to the average number of bedrooms in the
6 RDT zone. And you came back -- and your memo on Circles 39 and 40 indicates that
7 the formula that Mr. Knapp laid out, that proposes that the measurement of residential
8 density is an average of 4 bedrooms, is pretty much on target, generally. And we
9 needed to know that, and I appreciate you responding to my request. However, let me
10 say I don't feel that the Planning Board has given us the guidance and the help that we
11 need. Nor, frankly, do I feel that our staff has been adequately and optimally organized
12 to assist us in this range of issues that George Lechliden is talking about, that effects
13 farmers and their livelihood and one-third of the County and the future of our efforts to
14 preserve open space and agriculture. These are big policy questions and we are
15 dealing with them piecemeal, and I'm concerned about that, and I have some control
16 here over the agenda. And yet we have been driven by events and frankly to some
17 extent we've been driven by politics. And I wish we could step back and look at this in a
18 longer term and more careful way. However, were we to delay some of these pending
19 issues, not only this one on the multiuse systems, but the proposal regarding sand
20 mounds and the proposal regarding building lot terminations in this season in which
21 we're, in 2006, the suggestion might be made that anyone proposing delay was
22 insufficiently committed to the Ag Reserve. I am living in the same political world as
23 everyone else, and I'm trying as best I can to make clear my position and to assist my
24 colleagues to make clear their position, but I don't feel the environment we have been
25 operating in is optimal from a policy sense. Having said that, we've been consistent at
26 every opportunity. We're protecting the RDT zone. So, let the word go forth from this
27 day forward, if anyone is questioning our intent to maintain the RDT zone as open
28 space and agricultural, that is our intent, that's what we want and the record of this
29 Council has been abundantly clear. I don't think there should be any reason for
30 confusion. Nor do I think there should be any justification for any of us here or anyone in
31 the community to use the Ag Reserve as a political wedge issue. We're all committed,
32 and our votes have shown that we are committed to preserve this very, very important
33 resource. Mr. Knapp, we appreciate that you brought this forward. It's nice to see you,
34 happy Valentine's Day. We are now -- we have before us Mr. Perez's amendment to
35 your proposal, which would impose a hard cap of 5,000 gallons. I'm going to let you
36 comment -- I'm going to let you comment on that or on your underlying proposal if you
37 want. And I think -- and I see Ms. Floreen wants to comment again, and I think then we
38 can proceed fairly quickly to a vote on the amendment, and a vote on the underlying
39 proposal.

40
41 Councilmember Knapp,

42 Thank you Mr. President, and thank you colleagues, I apologize for my delay this
43 morning. And I appreciate the support of my colleagues in the Ag Reserve and issues
44 related to the Ag Reserve. Clearly there have been a number of issues and a lot of
45 discussion we've had on it this year, and as Mr. Leventhal indicated it's probably not



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1 going away anytime soon, which is a good thing. We, I think, have worked hard over the
2 course of the last three years to really strike a balance on a variety of issues. What was
3 it a month ago we passed the Shady Grove Sector Plan in which we increased housing
4 and density because it's smart growth. We recognized the need for increased housing.
5 By the same token we also, I think, recognized the foresight of folks 25 years ago to
6 support -- or create this thing and support this think called the Ag Reserve which
7 preserves our agricultural industry and gives us land to make sure that that can grow
8 and thrive. Those are tough balances to achieve, and I think we have worked hard to try
9 to do that. It's -- unfortunately, yes, there are certain things that are political, but I think
10 we've taken some descent policy steps. Mr. Hansen's memo, which I'm sure has been
11 referenced, in which it talked about trying to take a more comprehensive approach to
12 agriculture, I think is important. I don't think there is any one piece of legislation that
13 we're going to put out there that's going to address the issues that we're confronting as
14 the County gets more populous. And the challenges to preserve 93,000 acres for
15 agriculture going forward, those challenges will only continue to be more difficult. And
16 so I think that we need to recognize that I think this is one piece that builds on some of
17 the things that we as a Council have done before, by not allowing extensions of water
18 and sewer into the RDT. That being said, I don't think that we can look that this is going
19 to solve all of our issues. I'm assuming that Mr. Perez, when he introduced his
20 amendment similar to what he talked about in Committee, recognized the notion that,
21 potentially, by not having a cap you force a situation in which someone would want a
22 PIF, or some other institution would be then required to just purchase a lot more land in
23 order to get a larger system. Certainly that's a possibility, and I raised that as a issue
24 before as it related to the impervious caps, same general sense. And so, certainly that's
25 a possibility and I think there will be legislation forthcoming, or at least regulations as it
26 relates to building lot termination, which could address that in other piece. And so I don't
27 necessarily know that we're going to fix all of those issues with this. I appreciate Mr.
28 Perez's amendment and the only reason we didn't do that when we drafted the bill if the
29 first place was the notion that we tried to create kind of an apples to apples comparison.
30 And we weren't sure necessarily that there was a way to pick some number to say "Stop
31 here" that wasn't reasonably arbitrary. That being said, I think the issues that Mr. Perez
32 raised in the Committee meeting, I'm assuming again today, are issues worthy of
33 consideration, and I'm not opposed to the amendment. The notion of the arbitrariness I
34 think is still something that is out there. But it's something that, I mean I don't know if
35 Jeff, you want to speak to that, but give me just a second. I'm learning to talk as we get
36 here more and more years. But I think that what George had indicated before, that we
37 need to take a more comprehensive approach is right. And I think we need to keep
38 looking to make sure that we're not taking little bites to protect something because I
39 think you do lose the whole perspective. That being said there is one other thing, one
40 other large policy area that I continue to say that we need to address. And I have been
41 working with parts of the faith community to try to work on this is, there is a difficulty for
42 houses of worship in Montgomery County to grow to meet the needs of the communities
43 in which they serve. And I know that [INAUDIBLE] sent us a letter looking at the TOMX
44 zone as a place to potentially do additional zoning, and I support us looking at that. I
45 think there are a number of things, and I've asked the faith community to really outline



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1 what are the issues that they are running into as they look to grow. Clearly lack of open
2 space is an issue, but quite honestly lack of open space is an issue that we're
3 addressing on just about every issue in the County as it relates to housing and other
4 things. And so while I appreciate that, I think there are others as it relates to economics,
5 as it relates to zones, I think there's been a case of somewhat benign neglect as it
6 relates to the faith community because they're allowed in every zone, and so I think
7 people felt that because they were allowed in every zone, that therefore everything was
8 okay. And as a result no one's really kind of talked to the faith community, and
9 participated -- and had them participate much in the process to get that perspective as
10 to what difficulties they're running into. And I think we really need to focus on that in the
11 coming months to try and get a better handle on that and see what elements we can
12 address from a policy perspective to try and support them. And I look forward to working
13 with everyone to try and do that. And I appreciate, again, the work of the Committee; I
14 appreciate my colleagues' indulgence. I apologize again for my tardiness, and I saw that
15 Jeff had a comment as it related to my comments on the amendment.

16
17 Jeff Zyontz,

18 I just wanted to make sure in the record that at least there was a reason for the 5,000
19 limit. And that being it's a demarcation of state regulations, at which point you need a
20 higher evidence of nonfailure for the system. Being worried about the public health
21 effects of failure.

22
23 Councilmember Knapp,

24 Okay, I appreciate that. So, with that, I turn it back to the Council President.

25
26 Council President Leventhal,
27 Chairwoman Floreen?

28
29 Councilmember Floreen,

30 Thank you, Mr. President. I can count the votes. So I'm going to support Mr. Perez's
31 amendment, but I do want to say in response to the issues that have been raised, by
32 the farmers in terms of the piecemeal efforts that they're faced with, I think it's extremely
33 regrettable and I agree with Royce Hanson's comments to us in the memo that we
34 received a couple of weeks ago that we do need to look at this, all of these pieces
35 together. Unfortunately, we have not been presented with all of these pieces by the
36 Planning Board. Consequently, it has been left to each one of us to try to respond to
37 individual requests, to issues as they present themselves. And I think it is extremely
38 unfortunate that we, as a Council, are forced to proceed this way. Because I think we're
39 asking a great deal of the farming community, once planting season begins they're
40 going to be busy and we are not going to have the benefit of their involvement and
41 engagement at the level that they've been able to contribute to this debate so far. And I
42 am -- I know we were told in the PHED Committee that given the structure issues in
43 Park and Planning right now, it's going to be -- this -- any efforts they have started on
44 this issue are really going to be delayed for six months. And that simply adds to the
45 challenge of trying to be responsive to this collection of issues and to coordinate it. I'm



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1 not sure we will be able to, but I want to commit to everyone that we will try very hard to
2 be careful, and as I said earlier, to not impose unintended consequences on the
3 agricultural community or any of the folks who live and prosper in the RDT zone.

4
5 Council President Leventhal,
6 Mr. Knapp?

7
8 Councilmember Knapp,
9 Sorry, one quick thing. As we all went through the 25th anniversary of the Ag Reserve
10 last year and many of the issues that have come before us, it's been gratifying to me, as
11 the person representing at least the bulk of the Ag Reserve, that the number of
12 organizations who have come together to really focus a lot of attention and spend a lot
13 of efforts, a lot time and advocacy. And I think that there have been a lot of folks on a lot
14 of different perspectives or different sides of the issue, depending on which piece we're
15 taking up on any given day. But, I think the one thing that is true irrespective of what
16 side of the issue people have been on, is the commitment to trying to achieve a good
17 and workable policy. And I appreciate the efforts of the Preserve the Reserve folks, the
18 farmers, the faith community. I know the folks in Derwood have spent a lot of time on
19 this, as well. Andrea, from Solutions not Sprawl, I think there are lots of organizations
20 working very hard. And I think if the Ag Reserve, which I believe it will, continues to
21 prevail and to thrive, it will be on behalf of a lot of people working together to make
22 people more aware and understand and appreciate what the Ag Reserve is, and why it's
23 important to Montgomery County, and the Greater Washington D.C. Metropolitan
24 Region. And, so I thank everyone, irrespective of your perspective, for coming together
25 to try and work to make sure we are spending the right amount of time on the issues to
26 address something that I think is vital to the heritage and uniqueness of Montgomery
27 County.

28
29 Council President Leventhal,
30 Excellent. We are now voting on Mr. Perez's amendment and those in favor of the
31 amendment will signify by raising their hands. That would be everyone, unanimous
32 among those present. That takes us to the underlying proposal by Mr. Knapp as
33 amended. This is an amendment to the 10-year Comprehensive Water Supply and
34 Sewerage Systems Plan. I believe we can do this with a show of hands; we don't need
35 a roll call vote for this. Those in favor of the amendment to the 10-year Comprehensive
36 Water Supply and Sewerage Systems Plan will signify by raising their hands. It is
37 unanimous among those present. Okay, thank you very much. The Council stands...

38
39 Jeff Zyontz,
40 I just wanted to verify, Councilmember Leventhal, the Council's voting for the hard cap
41 as well as the equivalency cap, not one instead of the other. It's for both?

42
43 Council President Leventhal,
44 Both, that's correct, right. And so the Council stands in recess until the 1:30 public
45 hearing.

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1 [MUSIC]

2
3 Council President Leventhal,
4 Good afternoon ladies and gentlemen. This is a public hearing on a special
5 appropriation to the Montgomery County Public Schools FY '06 capital budget, an
6 amendment to the FY '05 through 2010 CIP for Seven Locks Elementary School
7 replacement in the amount of \$3,300,000. This public hearing will be continued to
8 March 7th, 2006, at 7:30 p.m. All speakers will be heard at that time. Agenda Item 8:
9 this is a public hearing on an amendment to the FY '05 through 2010 CIP of the
10 Department of Public Works and Transportation, the Division of Solid Waste Services
11 for the Gude Drive Processing Facility, which would move expenditures into a new
12 stand alone project for the purchase of a property on East Gude Drive and the
13 construction of a yard trim wood waste processing facility. A Transportation and
14 Environment Committee work session is tentatively scheduled for February 27th at 2:00
15 pm. Persons wishing to submit additional material for the Council's consideration should
16 do so by the close of business Friday, February 17th, 2006. There are no witnesses for
17 this hearing. Agenda Items 9 through 12: this is a public hearing on the following four
18 supplemental appropriations to the FY '06 capital budget and amendments to the FY '05
19 through 2010 capital improvements program: The Department of Environmental
20 Protection, for Montclair Manor Flood mitigation in the amount of \$968,000; the
21 Department of Public Works and Transportation, for Glen Echo Park in the amount of
22 \$262,000; the Department of Police, for the vehicle recovery facility in the amount of
23 \$1,190,000; and the Department of Public Works and Transportation, Division of Solid
24 Waste Services, for transfer station improvements in the amount of \$7,211,000.
25 Committee meetings have been scheduled. Persons wishing to submit additional
26 material for the Council's consideration should do so by the close of business, Friday,
27 February 17th, 2006. There are no witnesses for this hearing. The Council will recess
28 until 1:45 for a briefing on cost controls in the capital improvement program.

29
30 [NO AUDIO]

31
32 [MUSIC]

33
34 Council President Leventhal,
35 Okay, we're here to receive a briefing on calculating costs in the CIP. And we have a
36 number of participants here from the Executive branch that we know that the County
37 Executive has taken a somewhat different approach in the CIP that he submitted to us a
38 few weeks ago. We understand that we're all subject to forces larger than ourselves and
39 that the escalation of construction costs has been dramatic in recent years. And it is the



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1 primary driver behind the structure of this CIP and the reason -- the primary reason why
2 the County Executive may not propose funding every project that had previously been
3 promised in precisely the year in which it was previously promised. We know that the
4 County Executive, as we all do, wants to see all these good projects built as promptly as
5 possible and we know that the County Executive, as we all are, has to deal with
6 economic reality and the need to stay within our -- our bond rating and maintain good
7 accounting practices and good financial practices. Councilmembers will probably have a
8 lot of questions. I'm not sure who is going to be first from the Executive branch.

9
10 Arthur Holmes,
11 I'll start.

12
13 Council President Leventhal,
14 Director Holmes, the floor is yours.

15
16 Arthur Holmes,
17 Good afternoon. We appreciate this opportunity to discuss with you our recommended
18 methodology for costing facilities in the CIP now and in the future. When the County
19 Executive asked me to become the director of the Department of Public Works and
20 Transportation two of his priorities he gave me were, one, the construction of the
21 Montrose Parkway West, and 2, an investigation as to why there were significant
22 differences between the initially stated cost of public buildings and the actual cost of
23 public buildings. I assigned senior staff in DPWT to assist in both issues. As a result
24 Montrose Parkway West is now under construction and has been under construction for
25 the last five months. And we completed a review of the reasons for cost discrepancies
26 in the implementation of buildings laid in calendar year '05. Our analysis and
27 recommendations were reviewed and presented to key stakeholders in the process
28 within DPWT, the Offices of Management and Budget, the Chief Administrative Office,
29 and the special assistants to the County Executive. Major findings included: One, cost
30 estimates were generated too early in the process. Costs were being based on the
31 client agencies initial ideas at the time when zero percent engineering or design had
32 been completed. In many cases, there was not even a site selected for the building
33 location. Two, because of the uncertainty in the cost at this early stage, initial costs
34 were artificially escalated, but not clearly documented. This practice was fine when
35 construction escalation stayed below 4 or 5% per year but has not held up in the last
36 few years when construction costs increased in the 8 to 12% per year range. There was
37 not a consistent approach to updating cost estimates for programs that were
38 programmed beyond the first two years of the program. New projects with future
39 implementation schedules should be brought into the CIP as design only. Once
40 uncertainties are reduced to any actual design the costs can be more realistically
41 estimated and the standalone PDF can be prepared. Fifth, the design-only PDF should
42 contain a range of possible future construction costs and an estimate of the construction
43 starts and completion of the projects. As we go through this, I would hope that we would
44 take the good things, because there are some good things in here, and look at those
45 things that we have questions about, because I believe working together, we can fix



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1 those particular problems. So that's the way I would like to go at it and the briefing will
2 actually be done by Bruce Johnston, who I'm sure has briefed some of you here before.
3 Bruce.

4
5 Council President Leventhal,
6 Okay, before -- Bruce, would you...

7
8 Arthur Holmes,
9 Excuse me. I'd like to give you a soldier's story -- I was hoping that Subin would be here
10 -- I could say he was old enough to remember. We have essentially the same thing
11 what we call the big 5 weapon systems when I was the -- Deputy Chief of Staff for
12 Logistics. We knew that we were going to have a bow wave of monies out there that we
13 didn't know how many of these articles we are going to be able to fund. We had to look
14 at it, we had to prioritize it, and when we got to the point where all of them were ready,
15 after coming out of research and development, we had to make some hard choices as
16 to what it was that we were going to buy. And we did that. But I believe, after having
17 been here with most of you for the last four to eight years that, between us, we can find
18 a way to make sure that the monies that we need and the priorities that we need, are
19 there at the time that we need them.

20
21 Council President Leventhal,
22 Thank you, Art.

23
24 Arthur Holmes,
25 Bruce?

26
27 Council President Leventhal,
28 Bruce, before you get started, there are a couple of lights on. I don't know whether Mrs.
29 Praisner and Mr. Knapp have questions or whether you want to make opening
30 statements. If it's in the nature of an opening statement, go ahead. If you have
31 questions I'd rather hear the presentation and have questions after the presentation.

32
33 Councilmember Knapp,
34 I just had a quick remark. I want to thank you for putting this on the agenda and thank
35 everybody for coming over. Because part of the reason, at least, that the Public Safety
36 Committee recommended this yesterday, is we'd started kind of a discussion, we were
37 running into similar questions with each of the PDFs that we were approaching and then
38 we thought about we'd had to do the same thing at the Ed Committee too. And so we
39 kind of tossed this around with everybody at the table, with Bruce and Martha, and
40 suggested it may make sense to have had the briefing that MFP received just so we at
41 least we're all working off the same set of information. And that was really the premise
42 behind us suggesting this and so I don't -- from our perspective it wasn't any
43 preconceived notion of anything being good or bad, it was just to make sure we had an
44 understanding of what it was that we were looking at so that as we started to analyze



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1 things through the Committees that we at least didn't keep asking the same questions
2 seven different times.

3
4 Arthur Holmes,

5 And my remarks were not in a derogatory or pejorative sense. It was saying let's take a
6 look at this and see if there are good things, and we ought to adopt those good things.

7
8 Councilmember Knapp,

9 I just want to thank everybody for coming over on short notice and I thank the Council
10 President for putting this together.

11
12 Council President Leventhal,
13 Mrs. Praisner.

14
15 Councilmember Praisner,

16 It is true that MFP received a briefing and I will have some comments that I would like to
17 make after the presentation. But the unfortunate thing, I think, is that it has come over or
18 the discussion that MFP actually had occurred after the capital budget was presented to
19 us. I think if we had had an opportunity to have a broader conversation about what is
20 the approach to budgeting, and not waiting for the Executive's budget to come over, we
21 might have had a chance to have more dialogue and questions on options which we
22 now face with the process of trying to deal both with the actual projects and with the
23 approach. I will have some comments about the MFP Committee's conclusions, staff
24 recommendations -- Mr. Orlin's in the audience -- and our latest thoughts based on the
25 joint Public Safety/MFP Committee conversation yesterday dealing with the judicial
26 annex at the end of the presentation.

27
28 Council President Leventhal,
29 Okay, Bruce, please proceed. Thank you.

30
31 Bruce Johnston,

32 Thank you for the opportunity. It's good to be able to talk to you all together. The -- as
33 you may recall, about two and a half years ago DPWT reorganized, and at that time, we
34 had a new leadership team taking over the Montgomery County general buildings
35 process. At the same time, we were right in the midst of submitting the capital budget to
36 OMB and there was an old way of doing things and there was no time for our new
37 leadership team, not only to learn that process, let alone make any changes to the
38 process. But, since that time, in the last two and a half years, we have all been together
39 through the Strathmore issues, and MCDC, and a number of projects that have
40 experienced additional costs or increases in costs. We learned a lot during that period
41 of time. What I'm going to be asking to you from is a handout that is entitled DPWT
42 Capital Facilities Program, it's dated today's date. We have noticed that there are
43 basically six issues which lead to these costs. The focus of our study over the last
44 couple of years, we observed that the larger cost increases were related today
45 Montgomery County general projects, and so we focused on those. We also noticed



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1 that the larger and the more complex project, the more volatile those costs could be and
2 so we focused primarily on Montgomery County general government projects. The first
3 issue on this handout is noted Issue Number 1: that cost estimates previously were
4 sometimes not updated. In other words, in some cases, cost estimates that had been
5 used for the previous CIP, either two years or four years prior, were simply adjusted to
6 that point by inflation rather than developing new and updated cost estimates based on
7 the market conditions at that time. This practice did fail to account for construction
8 market escalation and it did not allow for the possibility of checking for any errors or
9 correcting any errors. It allowed those to continue on through the process. Issue
10 Number 2: the PORs were used as a source of cost estimates. You all know what a
11 POR is. It's a text document that describes the number of square feet and the type of a
12 building. It's basically at zero design. It's very, very preliminary. If you flip real quickly to
13 page 2, we can compare that in the facility planning bridges project -- program, we take
14 bridges to 100% design before we come up with a cost estimate for those bridges and
15 fund them for construction. In roadways, very successfully, we have been taking
16 projects to 35% complete design before funding them for final design and construction,
17 and those numbers have been not perfect but they are much better. And in the third
18 column, you notice that in buildings, historically, we have been funding them right at
19 zero percent design, and that becomes then the benchmark by which all subsequent
20 cost measurements are measured. Flipping back to page 1, Issue Number 3: cost
21 estimates were generated prior to site selection. Very, very frequently these cost
22 estimates that are put forward in the PDF are generated prior to even knowing where
23 the site would be. And there are an awful lot of cost factors that are involved in the
24 various sites, either the dimensions of the site, the logistics of it, whether it has access
25 to various roads, whether utilities would be extended to the site, what's there in the
26 soils, what kind of stormwater management would be provided. All those have huge
27 cost implications on the total PDF. Issue number 4: In the past, contingencies were just
28 basically a flat 10% across the board. Sometimes, they were not clearly explained,
29 sometimes they varied from that. These contingency rates were not geared to the
30 nature of the unknowns for each of these projects. Issue number 5: we had used -- in an
31 agreement with OMB we had used an inflation rate about 2 1/2 to 4%, which is kind of
32 keyed to the CPI. Today's inflation factors are in the range of 10% per year in some
33 cases. And you may recall in recent years we've noticed a rise in steel costs. We've
34 talked about it before, between 15 and 20%, just in that single commodity. Issue
35 number 6: cost estimates were not escalated beyond the midpoint of construction. The
36 inflation rate that was used in Issue Number 5 was only used for the first two years of
37 the CIP and everything beyond that was kept in a Macro and that's very troubling. But
38 having talked about these six issues now, let's turn to page 3, if you would. And on page
39 3, we take a look at an actual project. We just took one simple project and we wanted to
40 break it down to the way it was calculated in the FY '05 approved budget which is
41 shown in column 2, and the way we've now calculated in this recommended budget,
42 which is shown in column 3. Looking at column 2, the very bottom line there, that cost
43 for that project two years ago, \$7.855 million. Now we are looking in column 3, that
44 same project being \$13.007 million, or a cost increase across the board of 66%. Now,
45 how does that break down? The largest factors in those cost increases are in the



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1 shaded areas. Line "A" is the initial cost of that project. Two years ago, that project was
2 estimated -- the total project cost, before any adjustment factors or contingencies --
3 Council President Leventhal,
4 What page are you on?

5
6 Bruce Johnston,
7 I'm on page 3. And I'm looking at the shaded columns, the shaded areas in columns...

8
9 Council President Leventhal,
10 Those are or lines "G" and "H."

11
12 Councilmember Praisner,
13 Here is the problem, he handed out something and I think he is referring to that page 3.
14 You are looking at Circle 3 in the packet.

15
16 Council President Leventhal,
17 I'm sorry, but I don't think I have a copy of that handout.

18
19 Councilmember Praisner,
20 Isn't that what you are referring to?

21
22 Bruce Johnston,
23 I handed it to you earlier, but I'll get you another copy.

24
25 Council President Leventhal,
26 Well, I -- oh, I see, I've got it. Bruce, I have it. I have it. I apologize.

27
28 Councilmember Praisner,
29 Okay.

30
31 Bruce Johnston,
32 Is everybody looking at the...

33
34 Councilmember Praisner,
35 Your packet, page 3.

36
37 Bruce Johnston,
38 Yes, ma'am, my packet, page 3. Thank you for that clarification. And the shaded areas
39 in this exhibit indicate what we feel are -- well, obviously -- are the two largest
40 components of these cost increases. The first cost, again, two years ago, the
41 Gaithersburg Library renovation was estimated about \$6.8 million. In that two years, we
42 have recognized market escalation which now takes that cost to \$9 million. That's a real
43 cost increase. And that's experienced already. That's in the book. For lines "G" and "H,"
44 the comparison there is what we use today do in inflation, if we just booked in two years
45 of inflation at about 2 1/2%, that would have accounted for the 356,000 in Column 2,



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1 Line "H." In Column 3 Line "G," we are now looking at escalating this project at 5.6%
2 inflation per year out to the midpoint of construction. In this case it's just under four
3 years from when the cost estimate put together to the midpoint of construction. 5.6%
4 over four years, adds an additional \$2.1 million to this project, or 35% of that cost
5 increase. Between those two factors you are looking at almost 80% of that cost increase
6 for those projects. There are other things involved, too. We are adding in what we feel
7 are very, very desirable industry standards where we add risk factors in when we have
8 projects that are unknown. In this particular project, its a renovation so there are no
9 unknowns right now in the site at least. We add in a modest design contingency and
10 construction contingency and those are shown in this diagram. And that's how we get to
11 the 66% cost increase in just that one project, and that's just an example of that. Now,
12 on the next page, on page 4, working with OMB and what we submitted to the County
13 Executive and what is in the budget, we have now submitted these projects into four
14 main categories. Category Number 1 are existing projects that are well into design, that
15 construction is in '07, '08, and possibly '09. And we did look at the cost estimates in
16 great detail before submitting them; we're looking for efficiencies. Category 2 projects
17 are existing projects that have construction in '09 or beyond. Design has not yet started
18 in these cases, therefore the cost estimates are less reliable. Construction is in '09 or
19 beyond and we moved those projects in, we budgeted them for design only so that we
20 could then get a better cost estimate. Category 3 are the new projects, the result of that
21 is the same. That those would be provided for design only and no construction costs at
22 this time, and we would provide a fiscal note indicating the estimated cost range for
23 construction. And then there are a number of high-risk projects, most notably the
24 Judicial Center Annex which has been budgeted before, but it's such a high risk and
25 high cost that we did budget, at this time, for design only and again, provided a fiscal
26 note. There are four projects -- and in fact there might be even one more -- that did not
27 fit into these categories: the Wheaton Library, Silver Spring Library, Olney Library, and
28 North Potomac Recreation Center. And those have kind of a story of their own that we
29 can get into in a moment. Flipping now to page 5 and you will turn it side ways, if you
30 will, this is a typical project schedule. And at the very top we show a bar chart of the
31 major tasks that are involved in beginning the design of a project once we have funding
32 for it. And the first thing we go through is to select the A/E, the architect and the
33 engineer. We get in -- we have a contract with them. We go into concept development
34 which takes about three months. We go into schematic design which takes another
35 three months. Design development and then actually construction documents are
36 prepared. We go through a bidding process. We select a contractor and the very last
37 line of the top bar should say "Construction," not "Construction Documents." And that
38 can take anywhere from 15 to 18 to 24 months. Down below is another graph which
39 indicates at each of those points, how complete is the information that we have
40 prepared? And if you'll notice, at the end of the little bar that says 20% at the end of
41 schematic design process, we are about 20% complete for the technical information.
42 We would suggest that's a great time to come across street and provide a briefing to the
43 appropriate Council Committee on the status of that project, how things are going,
44 making sure that we are going in the right direction and it is a good time for any course
45 correction, should there be a need for that. And then once we get up to about -- when



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1 we get complete with the design development process, we are at 90% completed with
2 the information. That's where most of the major decisions are made with respect to the
3 building systems, the building envelope, and most of that is known, and either at that
4 point or some point before that, we could come across street at the regular CIP cycle
5 and add in construction costs into the system. But that shows the reliability and how
6 much more reliable the cost estimate is, some point between schematic design and
7 completion of design development. Now, the next page is something that the MFP
8 Committee asked for, pages 6 and 7. Pages 6 and 7 are a listing of all of the projects in
9 Montgomery County general government projects that are listed in the recommended
10 CIP. Page 6 is a listing of Category 1 projects. You can see the third column over has a
11 column of ones, that's the category that those are in. And so those are all funded for full
12 design and construction. If you flip to page 7, you will notice at the very top, we still have
13 a few category 1 projects, then we have about two category 2 projects and a number of
14 category 3s. The 2's and 3's are the ones that are slated for design only. And over to
15 the right you will see in the various years, we plugged in here the amounts of the design
16 funding or the funding in the CIP for those various years. If you notice that a majority of
17 those funds, for example, look at line 52, which is the Second District Police Station In
18 Bethesda, it has \$491,000 and \$770,000 scheduled in FY '10 and '11. That's for the
19 design of that project. That would mean that some time after '11 we would have design
20 funding for that. If you'll notice, most of those design fundings are out in the range of '10
21 and '11. There are a few in fiscal year '09. And the point there is that the construction
22 dollars, after the design would be complete for these projects, would then -- most of
23 them are out in the '10, '11, '12 and beyond time frame. At the very bottom of this list,
24 the last tabulation, the last five projects are special projects and those are the ones that
25 did not fit into the other categories. And at the very bottom, we have notes that regard
26 the various site acquisition status comments of each of the projects that is noted above.
27 Last, I would like to look at page 8. This is just a little bit of an exhibit and it's -- as
28 Chuck pointed out to me a little while ago -- some of the numbers in the right hand
29 column are not correct. But at the left of this graph, you have two vertical bars and the
30 taller of those vertical bars is the total volume in dollars of the projects back around
31 1995 at about \$135 million. The tall bar on the right shows that in 2004 we had a total
32 project value of about \$635 million. And back to the left again, the smaller bar indicates
33 the largest project at that time in 1995, that was a \$10 million project. That was a
34 sizable project at that time. You know, four, we were dealing with Strathmore which, at
35 the time was a \$90 million project, it ended up at around \$95 million. That was the
36 largest project at that time, the largest project that we're looking at in the future is going
37 to be more than that. The point here is that a small deviation, a five or six inflation rate
38 per year now, has a much more significant impact on the dollar costs of these projects
39 than it did back some time ago.

40
41 Martha Lamborn,

42 In summary, what you hear from Bruce is the general identification of the problems we
43 have found. The summary of the steps that we have taken. The adjustments we have
44 made to our projects include... We have assured that we include full contingencies in
45 projects, a fact that we were not doing in the past. We have added industry standard



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1 risk factors to the cost so that we are not caught by surprise. We have escalated the
2 costs to the midpoint of construction, which is more in line with the industry standards.
3 We think we have better cost estimates on those for which we have provided cost
4 estimates. They are newly estimated by a cost estimator and we believe that the
5 proposal we are making to you to provide design funding first for large or relatively
6 complicated projects will get you a cost estimate at a partial design point, which is better
7 than a zero design point, and after site selection. Finally, what we have done is we have
8 provided a -- or recommended a CIP with a much larger set of set-asides in the '10 to
9 '12 time frame, when most of these projects -- the judicial center is a separate animal --
10 when those of these projects will come -- complete their design.

11
12 Council President Leventhal,
13 Beverly.

14
15 Beverly Swaim-Staley,
16 I just want to thank you for the opportunity to give the presentation. I think that
17 concludes our presentation and we're here for questions.

18
19 Council President Leventhal,
20 Okay, very good. I know that Mrs. Praisner has a number of questions. Let me just
21 make a couple of comments. First of all, Beverly, I want to thank you for the briefing that
22 you gave to me prior to the release of the capital budget. It enabled me to understand
23 when this issue came up because you and I had already spoken about it. And you'll
24 recall when we met I said, "Wow, you're going to get a lot of questions about that." So,
25 on the one hand, I absolutely understand the presentations that have been made here
26 and it is very, very important that all Councilmembers understand how we are subject to
27 forces beyond our control and how, much as we may desire to keep announced
28 schedules on track, dramatic escalation in construction costs will have some effect on
29 our ability to keep projects on schedule, whether that is in the schools budget, the
30 transportation budget, parks, rec, libraries, wherever. And all of us on both sides of the
31 street hope that we can keep projects on track to the maximum extent possible. All of us
32 on both sides of the street support schools and parks and libraries and rec and bike
33 trails and all the other projects, but this issue of escalating construction costs is a fact,
34 it's a reality, and we are all coping with how best to deal with it. The methodology that
35 the Executive has used to deal with that is debatable. We are here and we have the
36 ultimate responsibility to put the capital budget together. So it seems to me that over the
37 next few weeks our purpose here is, frankly, to put together the capital budget. We've
38 received the County Executive's recommendations, that's fine. They are not dispositive,
39 they never are. There is no need to -- we are not at war with anyone. We have a task
40 and we'll try to fulfill that task, but we are all affected by the reality that you have
41 described of this dramatic escalation in construction costs. And I think it's important
42 when we communicate with the public that the public understands this, and it's a hard
43 thing to understand, so that expectations of what might have occurred in years 4, 5, 6,
44 7, 8, 9, 10, 11, 12 of a long-range plan may be modified or may not. We are all going to
45 do the best we can in a fluid environment with, you know, some ability to control some



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1 factors. We're going to borrow a little more than what the County Executive expected.
2 I'm optimistic that the County Executive may find some additional Pay/Go revenue and I
3 expect that the Council will as well. We'll do what we can but there are forces beyond
4 our control. And so any suggestion that any actor in this does not care about schools or
5 does not care about libraries, rec centers, bike trails, or any of the rest of it I think is not
6 well placed given that we are all making our best efforts in an environment that includes
7 many things that we can't control. Having said, that the critical question that I have is
8 this: I understand, and it seems to me prudent to include only design for a number of
9 these projects, what you have described in categories 2 and 3. The concern is -- and I
10 don't know that anyone can really answer this concern because it's really about what
11 might have been -- but the concern is, if you program design fund for a whole lot more
12 projects than we'll ever be able to afford to build, are we unduly raising expectations in
13 the community that all of these things -- we only had money for design so we designed
14 a whole lot more projects than we'd ever be able to afford to construct. That has been
15 my concern right from the get go. Can you address that, Beverly?

16
17 Beverly Swaim-Staley,

18 I think your concerns would be legitimate and obviously that will be for you all to decide
19 if we have put more things in design than you think would be prudent, but we agree with
20 that concern so we have tried to -- it is really a limited number of the projects that are in
21 for design. Most of them are in the out years. Set-asides are much larger than they
22 normally are. But, in fact, the large construction costs for many of these projects are, in
23 fact, in the out years beyond year '12. And we certainly agree. It's the County
24 Executive's recommended budget and we'll all be working together. We are certainly
25 here to answer your questions and work through the process.

26
27 Council President Leventhal,
28 Thanks, Mrs. Praisner.

29
30 Councilmember Praisner,

31 Well, I still have to say that I think, had we had a comprehensive MFP and full Council
32 opportunity for this discussion before our capital budget came over, we might have been
33 able to have some of these issues addressed and had some dialogue with the
34 Executive before this is presented and raised not only concerns with the Council but
35 concerns with the public as well. Secondly, I think in the conversations that we had
36 there seems to me to be legitimate and unopposed support for the issues of building in
37 more of inflation on a scheduled and cycled basis rather than keeping a project forever
38 at a number that it entered at. That's like saying, you always be 3 or 4 and you'll never
39 grow up. And the project does grow up in its process and you get more information and
40 you also know that there are factors that have been happening outside of the facility
41 planning process that relate to inflation and construction costs. I also think having had a
42 conversation about Strathmore that we talked about the whole issue of contingency and
43 what's built in and obviously the extent to which projects are unique for us as County
44 government. I think this is more true for County government than the other agencies
45 because County government has a whole variety of projects that it works on. It's not like



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1 the school system with maybe a different size school or a different geography but
2 they're still building basically the program of requirements over and over again for an
3 elementary school and a middle school and a high school. And that's also true of the
4 college when it talks about its classroom buildings. There may be variations but in
5 essence, there is not a lot of unknowns from a standpoint of the process. We've also
6 had conversations within the MFP Committee about the whole issue of site selection
7 and the facility planning process and the fact that we have to find some opportunity to
8 be more aggressive with the Planning Board and others about having an arsenal of
9 sites potentially and of perhaps even making a determination about the site very early in
10 the process rather than laying out a big question mark as, you know, we have a fire
11 station in the sky but it doesn't land anywhere until very late. And we all know that the
12 environmental issues are such and the topography of this County is such that this is
13 going to have a significant factor. We may with the community be leaving an unrealistic
14 expectation for the search for the ideal, versus the location and getting on with
15 construction. I think if you ask most communities members, they want that rec center
16 and they can -- certainly, there'll be one or two places where folks are adamantly
17 opposed to a site, but there is also a lot of opportunities to focus on the content rather
18 than the meets and bounds where the facility might be. So I think there's lots of work.
19 The concern that I think I expressed and maybe my colleagues on the MFP Committee
20 as well, is that we have so many variables changing at this point in the process. One,
21 we are talking about fairly far down the line, 100% design or 75 or 50 or whatever we
22 are talking about before we actually plug in numbers, and the schedule that you have
23 shown us, the hypothetical schedule starts with the calendar of the CIP and we know
24 not all projects are going to start on July 1 and end in this cycle. And the experience
25 with this County Executive has been a reluctance to end over projects when they are
26 ready for facility -- at whatever facility planning point you may be. Consequently,
27 whatever it; 35% design, 50% design or 100% design, if you are not funding the project
28 when the design is done, you are building in problems associated with your estimates
29 versus reality. And I think the concern that's been raised is that you get all the way down
30 to that point and there is not any money to do the project. So, the weighing in of that, I
31 think, causes a problem. Your chart on page 8 that shows the -- I guess what it is is the
32 estimate of these projects in 1995 versus the actual costs in 2004. Is that what this is,
33 Bruce?

34
35 Bruce Johnston,
36 No, ma'am.

37
38 Councilmember Praisner,
39 What is that supposed to mean then?

40
41 Bruce Johnston,
42 The largest project back in 1995 was a value of around \$10 million.

43
44 Councilmember Praisner,
45 Okay.



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Bruce Johnston,

That was the project done, gone. It was back in 1995. The largest project that we had in 2004 was on the order of magnitude of around \$90 million. And the sum of the total -- sum total of all the projects that we worked on back in 1995 added up to grand total of \$135 million. Those projects are all done and built but the new projects that we were working on in 2004, the sum total of all those projects, the value was around \$635 million.

Councilmember Praisner,

So this is chart that's telling us that the cost and the value of the projects we are dealing with has grown significantly? That's all it's showing us?

Bruce Johnston,

That's all it's showing.

Councilmember Praisner,

I guess we would all accept that as a given. So I'm not sure, beyond that, what we are saying with this chart. Because you have listed all these projects and the costs and most of those projects are one of a kind type things with the exception of a couple of rec centers or are, you know, issues that I think make my case that they are not likely to continue to appear. I'm not sure what the numbers in the charts are supposed to show other than the fact that our capital budget has increased, the cost of the projects have increased, and look at these projects that are so expensive that we have in any one of these given years.

Bruce Johnston,

It's also to point out that, if -- and there has been, over the past couple of years, a much larger escalation as we can document in construction costs and commodities. And when you apply that larger percentage on an annual escalation basis to a much larger either project or total volume of projects, you're going to end up with a much larger number that's a lot harder to manage.

Councilmember Praisner,

Sure. Obviously, inflation or construction costs are going up greater than they have in the past, so, therefore, even a small project is increasing in its costs and, therefore, you are handling very expensive projects. If that's the point, I accept it. I just wasn't sure how it related to the issue of when we get figures or how we program the CIP. Because it still does not respond to the gap between design and implementation that can occur if we don't have a specific year identified for when construction will occur. We also don't have a way in that chart of looking at the comparison of set-asides in those fiscal years where you've increased the set-asides and identified whether any of these projected projects are going to be possible given inflation projections, construction cost projections, and the time period. So, for example, maybe you have -- maybe there is not enough money in set asides for many of these projects which then reinforces the



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1 problem that we have of saying that you have increased the set-asides in order to
2 accommodate the fact that you have not shown the construction costs on these
3 projects. What I'm saying is there is not enough money in the set-asides to handle the
4 projects and by not showing any construction cost for any of these projects, they are all
5 in a limbo mode, whereas your point is that waiting -- that the facility planning has not
6 been a go/no-go comment. You made the point to us that 35% go/no-go is not a
7 decision that the Council has rejected projects on. So, therefore, that's why we should
8 not be coming to us at that point in the process. But if you wait until 100% or very close
9 to that number and you don't have enough money set aside, then you are designing for
10 something that you can't construct.

11
12 Arthur Holmes,

13 Okay, we looked at that, [INAUDIBLE] correct me if I'm wrong, but we have here the
14 chart on page 5 where actually, the indication is when the Council want us to come back
15 to it, we will come back to the Council at that particular time [INAUDIBLE]. The example
16 that I gave is that, certainly, as you go down, you're going to look at what the total is,
17 and at that particular time you'll have to make some decisions.

18
19 Hamid Omidvar,

20 I want to also discuss the chart on page 5 since you asked the question. The design
21 period is 16 months as indicated in those four phases in that chart. Our standard project
22 is anything between 12 months and 16 months, therefore, you have four months of lap
23 in there. Then there's at the end of the period, we have the contractor selection of four
24 months, which doesn't have to happen before that, so that gives you eight months lap in
25 there. That will give you that fluctuation and flexibility that you need. Also, if you look at
26 where it says add construction cost at 90%, between that time period and the beginning
27 of the fiscal year, there is a nine-month. We think those are adequate timing between
28 projects.

29
30 Councilmember Praisner,

31 Are you saying that the only time we'll make that judgment is at the beginning of the
32 fiscal year?

33
34 Hamid Omidvar,

35 No, no. What I'm trying to say is that in a normal CIP process, you go through this
36 project and then the decision is made by May or July. However, in our proposal, when
37 we come to you, it looks like briefing to the Council is at the end of the schematic design
38 where it falls April or so. And if -- the Council has enough time from that time to the start
39 of the fiscal year of '09, the April is in the calendar year 2007 or fiscal year '07. So you
40 have enough time, minimum nine months. Project has enough time, fluctuating between
41 seven, eight, nine months, to make a decision as to go or no-go. It wouldn't be that
42 there is no time to evaluate it.

43
44 Councilmember Praisner,



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1 That's not my point. That's not my point. My point is that the calendar will drive when the
2 Executive presents the document to us and, therefore, you will have a gap and it will sit
3 for nine months or not.

4
5 Martha Lamborn,

6 I think that the chart that -- the combination of charts that I handed out to you may help
7 to put your mind at ease about this. The top chart shows you, for MCG as well as the
8 college, the array of dates for the projects that we have proposed for design only. You
9 will notice that there are several of them in the gray area which is '07 and '08. And those
10 would be the ones that each have their own story and that we will have to address as
11 we move forward with this. But if you look -- the majority of them are actually in the '09
12 to '12 time frame. They come due, if you will, four of them come due in fiscal year '09,
13 seven or so in '10, and a similar number in '11. If you would look at the next page, that's
14 the general obligation bond adjustment chart. It has not been updated since the Council
15 took its adjustment to spending affordability action. But the point is still there in the part
16 that is -- in the part that's circled. The set-aside in fiscal '10 which has lowered a little bit
17 based on your action, which starts high and moves to low, is \$35 million. You get to \$69
18 million and they get to \$121 million. Now, there are some observations that I have made
19 in my time working with both sides of the street. First, I have not actually seen us get to
20 the second or third or fourth year and actually go down. One time, bad recession
21 happened. Other than that, our CIPs -- right now, we'll build one that looks like this but
22 our CIP, by the time we get out there, is very likely to be doing this. Second, assuming
23 that our economy continues to improve, we'll likely have more fiscal capacity in the outer
24 years.

25
26 Councilmember Praisner,

27 So we make one argument for spending affordability and then we make another
28 argument to justify the CIP as you've structured it. I give up! I give up!

29
30 Council President Leventhal,

31 Okay, since Ms. Praisner has given up I'll call on Mr. Knapp.

32
33 Councilmember Praisner,

34 Good God!

35
36 Martha Lamborn,

37 I'm very sorry.

38
39 Council President Leventhal,

40 Mr. Knapp has the floor.

41
42 Councilmember Knapp,

43 Okay, thanks. I appreciate the presentations. I have a couple just questions first to
44 make sure we're all talking about the same thing. You talk about moving things into
45 design and making sure we have design before we actually do the cost estimates. I just



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1 want to -- we talk about planning and design as though they are interchangeable
2 concepts and I don't know that they are. And so I wanted to actually clarify what is
3 planning, when does the POR come in, and when does design, and how do you
4 differentiate among those things along this process?

5
6 Bruce Johnston,

7 Well, they are different things and if you'll look at the chart again on page 5 by the time
8 we get to the point of selecting the A/E we have developed for these general
9 government buildings, we have developed the POR. Right now what we're defining as
10 planning for general government buildings is the preparation of the POR. Once we
11 select and A/E, and architect and engineering team...

12
13 Councilmember Knapp,

14 Okay, and a POR is an initial set...

15
16 Bruce Johnston,

17 A Program of...

18
19 Councilmember Knapp,

20 No, I know, an acronym, but it effectively is an initial set of requirements, or is it merely
21 a description of what you hope to be building?

22
23 Bruce Johnston,

24 It's a definition of what that project will be. It provides the area in terms of square feet of
25 various uses and spaces. It provides a little bit of guidance on how that is going to be
26 arranged. Hamid is probably more capable of describing it.

27
28 Councilmember Knapp,

29 So it really isn't, if I hear you, any real definition of requirements, it is the definition of a
30 building with kind of these types of things. It's four-bedroom house, and three
31 bathrooms and a kitchen and a dining room, but it does not necessarily say what goes
32 in any of those things, just that we roughly have those types of rooms.

33
34 Bruce Johnston,

35 Right.

36
37 Hamid Omidvar,

38 Since it is a commercial building, whatever we do is a commercial building, the definition
39 is that, first of all, it is not a building program. That means it does not describe systems
40 of the building, finishes, and the standards of what needs to be accomplished. None of
41 these things are there. It is something more than a description of operation of the
42 building. It's a library and normally, we do this type of things, and the kind of have the
43 spaces that we need. Now, here is where it goes above and beyond operations. These
44 are the type of spaces we need, and that's how big they are, and this type of personnel



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1 is in that room. So in a way, program requirement is one notch above an operational
2 requirement explanation. It is, by no means, a building program.

3
4 Councilmember Knapp,
5 Okay. So in the -- in your chart and page 5, Bruce, then, planning the POR is not even
6 on this chart, it's before that?

7
8 Bruce Johnston,
9 Correct, it would be before this. Yes.

10
11 Councilmember Knapp,
12 So, prior to the proposal that you made that time, we have been making cost estimates
13 on the basis of, if I follow this chart right, very little information?

14
15 Bruce Johnston,
16 Yes.

17
18 Councilmember Knapp,
19 To effectively being none?

20
21 Bruce Johnston,
22 That's our point. Basically, it's based on zero percent design.

23
24 Councilmember Knapp,
25 Okay. All right. Given this new approach, is it -- I mean, on its face, it sounds like it
26 makes more sense. Obviously there are a lot of other issues associated with it but on its
27 face, is this our approach? Is this an approach that we have looked at other people
28 having used? Do we have some sense as to what type of margin of error we are
29 beginning to look at? Are we going to have only -- I'm just curious as to...

30
31 Arthur Holmes,
32 This effort was started -- I'm sorry. This effort was started as I had indicated, by the CE
33 saying to me, "Why are we having these great fluctuations in cost?" I had my folk go
34 around and talk to people in OMB, both in DPWT, throughout the other agencies that
35 have the PORs, and we looked at what kind of things went on. And that's the population
36 that we have looked at when we looked at this particular thing. And then we came up
37 and said, "Okay, these are the things that are contributing to it" and then we start today
38 move from there. So we don't have any great research behind it.

39
40 Martha Lamborn,
41 I do need to tell you that nobody slides, "Okay, this is a good idea" by me if I can avoid
42 it. DPWT came forward during the course of our consideration this year with a variety of
43 industry standards and industry forecasts which are publicly available and can I be
44 made available to you that shows that escalation in the way we have recommended it to



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1 you, I'm not the expert here, but I was convinced I read every single page of it and we
2 can provide that information.

3
4 Arthur Holmes,

5 I wasn't saying that we just talked. We did these numbers that we have in here are
6 numbers that we have gotten out of, you know, pamphlets and books that are...

7
8 Councilmember Knapp,

9 No, I didn't think anybody was making it up. I just wanted to get a sense there is a
10 higher level of uncertainty around these numbers than numbers we've had in the past.
11 I'm trying to get a sense of, we are using a model to see how strong the up certainty
12 was or do we have to wait until this bears out.

13
14 Beverly Swaim-Staley,

15 When DPWT brought this issue and we discussed it with OMB, this kind of a process
16 were things that I had been more familiar with within other agencies, such as how the
17 state approaches college funding, all the transportation funding, some other facilities.
18 So I think -- and Art and I chatted and he is familiar with similar processes in some of
19 federal agencies. I think using a process where you do more design before you commit
20 to doing construction process is not an unusual -- it may, in fact, be a very normal
21 process. An industry standard, so to speak.

22
23 Hamid Omidvar,

24 Mr. Knapp, I also wanted to add that you are at a disadvantage where we are coming at
25 one point and introducing only the cost factor of this. In past year and a half, two years,
26 this is a business of project management. It was a task. How can we improve it? You
27 cannot separate different legs of this table, any one you take out, the table is going to
28 collapse. We have been looking at the scope control, quality control, schedule control,
29 budget control, which cost is part of it, and project communication and documentation
30 control. Each one of these led us to something. For example right now the staff, the
31 division, the department is taking on the systematic project management. This -- what
32 we found as to how to do the budget control, cost control, and then the reason behind it,
33 where the deficiencies are, it led us automatically to certain point, to some conclusion,
34 as to what's the most prudent, smart way to do it in order to avoid coming back in
35 multiple times during the life of a project and say, "Oh, by the way, we think the cost is
36 more." I think we need to separate in our mind the logic behind what we are doing and
37 then how we can implement it. We should accept, first, the logic. This is the logic that
38 makes sense and the fact that what we need to do during the facility planning, what kind
39 of documentation do we need at the end of a facility planning? Maybe we need to have
40 a new way of facility planning so that it brings us closer to the reality rather than what
41 we have now. Yes, we have that conclusion as well. However, the fact of the matter is
42 that we have learned in a hard way by the end of the day, we have to pay the fair
43 market value of the product that we seek. There is no way out of it. Then how would you
44 make that determination in advance, because it's required? You have to make that
45 decision. And this is our way of presenting it to you. And we think -- now, how in terms



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1 of policy and financing you get it done this year, which is a transition year and then for a
2 long time, later on, that's your prerogative.

3
4 Councilmember Knapp,

5 Right. I appreciate that. Do -- when you went through and identified, I guess the 2s and
6 3s for design -- let me back up first. Is -- I guess implicit in your recommendation is then
7 we won't see anything recommended for the CIP until you have done -- we can't do that
8 because we have to appropriated money for the actual POR piece. At what point do we
9 put something in the CIP for planning and then when, I guess, does it comes back? For
10 example, Fire and Rescue, so we need a new fire station for East County. We did the
11 Fire and Rescue master plan, we know that that's probably something that need to
12 happen sooner rather than later. How does that occur given this new process?

13
14 Martha Lamborn,

15 The facility -- the planning, the step to creating the program of requirements would
16 continue to be done in the facility planning project as it is done now. We would then
17 come forward when that process is complete and recommend design. As I told you
18 earlier yesterday, for MCG projects, we generally, in order to be able to front load other
19 agencies MCG projects generally come in later as you see these charts. We would put
20 the design in at some point later in the program. Then when the next CIP cycle comes
21 around after the design has started, we will have a good deal more information. We may
22 not be at 100%, we may not be at 90%, but we will be at better than zero percent and
23 we will have a good deal more information about what the -- we will have knocked some
24 of the risks off the table. We will have a better idea of maybe we'll have our site by then.
25 And the point is, as soon as the cycle comes around, wherever we are in the design is
26 better than what we have now. And so the idea would be to come back then. Now, if
27 we're going to be at 100% design in six months in front of a CIP, probably what we
28 ought to do is not do that but come back in the prior CIP when we were in the beginning
29 of design. So it is not our intent to insist that we go fully to 100% design, whenever
30 that's over, we stop, we go home and call it a day. It is our plan to work very hard to get
31 better numbers. I mean, that's what this whole point is.

32
33 Councilmember Knapp,

34 I agree.

35
36 Martha Lamborn,

37 We are trying to get you better information.

38
39 Councilmember Knapp,

40 I'm just trying to make sure I understand. Building on Mrs. Praisner's questions on the
41 set-aside analysis, you did put "X" number of projects in design. Did you -- I mean, yes,
42 at the end of the day, we as the Council have the prerogative to move things around as
43 we want to, but did you do -- I mean the County Executive as has some idea as to what
44 he would prioritize in those things. In that set-aside analysis was there some exercise to
45 look at those projects that the County Executive would like to see that the set-aside



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1 would actually match roughly the range of construction costs for those projects, or is the
2 set-aside kind of what was left on the set-aside? And, again, this is not loaded. I'm just
3 curious as to see how did we get to the set-aside number?

4
5 Martha Lamborn,

6 This is the jigsaw puzzle that we put together for the County Executive for you. It's the
7 same jigsaw puzzle. Where did it Glenn go, where did Glenn go? It is the same jigsaw
8 puzzle that Glenn puts together for you on reconciliation day. The structure that we
9 began before putting anything, you've got a zero CIP for '07-'12, structure includes a
10 number of assumptions. Assumption Number 1 is that projects that are already in there
11 have priority over projects that are new. Safety has priority over "bla-bla-bla". There are
12 57 of those. And that if we're going to program design only, or recommend design only,
13 we're going to maintain huge unheard of set-asides. And those were the words we used
14 with Mr. Duncan. And in fact, I would not call it perfect but we got quite close to the level
15 of set-asides that we were looking to maintain. And then on top of it, at the risk of having
16 everybody go look at them, it has been my experience that these things change
17 overtime. So I can't tell you that dollar for dollar everyone of these matches. I can't tell
18 you that they will be in the CIP when you finish voting in May. Let us assume they are
19 exactly like this in May, in the '09 to '14, I can't tell you if we will be ready with good
20 numbers. There are too many variables.

21
22 Councilmember Knapp,
23 Right.

24
25 Martha Lamborn,

26 So what we have done is programmed as best we can against all contingencies. Is it
27 perfect? Probably not.

28
29 Councilmember Knapp,

30 No, I don't think anybody is shooting for perfect. I think at this point we'd just like to get
31 to "good."

32
33 Martha Lamborn,

34 I think it's better, I feel, much better. I think it's much better.

35
36 Councilmember Knapp,

37 Right. Okay. Well, I guess kind of just some observations then. If I look at it, we are
38 looking -- you basically provide something with different sets of assumptions. You think
39 those assumptions get us to better cost estimates than we've had in the past.

40
41 Martha Lamborn,

42 I think the assumptions that we have been working on in the past are, in fact, what got
43 us into what we are in. So what we are trying to do is build our way out.

44
45 Councilmember Knapp,



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1 Right. Okay. Then, so that's one piece. Then you've got some notion of escalation
2 construction cost which is another thing that is being brought to bear on potential
3 increases in costs, but those are not the same issues necessarily. Those are separate
4 assumptions and some increase in construction costs, those two pieces. Then what
5 comes back to us is the notion of what are the priorities that we have then got to
6 establish? And we can move all the pieces around but the challenge is that if we agree
7 with your assumptions, then we've got a hole to fill, which potentially puts us in a difficult
8 situation and we've had the dispute already because...

9
10 Martha Lamborn,
11 I don't understand the point.

12
13 Councilmember Knapp,
14 I know, I know. The problem we have -- the hole we have to fill is some level of
15 expectation -- I mean Mr. Leventhal already laid this out there. That there is some level
16 of expectation on the basis of projects that are out there we're saying now, because are
17 initial cost estimates weren't good, our other cost estimates are better that we have the
18 reality of that delta to deal with. Then the other expectation we have to deal with is is
19 you've got a school system that may or may not take the same approach but has
20 another similar list over here and the other challenge then is to reconcile those two
21 pieces because they're going to say that their stuff is ready to go. We're necessarily
22 going to say our stuff is either going to be more expensive or is going to take a little bit
23 slower approach. So County government projects are going to be competing against
24 themselves over here on the side as opposed to competing in total.

25
26 Martha Lamborn,
27 Right, this is how the CIP has been built for probably a decade, from my perspective.
28 The school system projects, they are much more similar to each other and they have
29 children without desks. So the school system projects to the best of our ability has been
30 funded up front and everything else goes back. Does it compete among itself? Yeah,
31 sort of. What I have tried to do and what you all very much have sort of stuck to is, once
32 something is in the CIP, however, even if it's in year five or year six, whether it's design
33 or something it doesn't pull out. And, in fact, it moves forward on a reasonably
34 predictable schedule, not every time.

35
36 Councilmember Knapp,
37 And I'm not assigning a judgment. I'm merely making sure that I understand all of the
38 pieces as we proceed down this road. That's all I'm trying to get to at this point. We'll
39 have judgment, we'll have months for judgment, at this point, I want to make sure what
40 the game is that we are playing. Okay, thank you.

41
42 Council President Leventhal,
43 Mr. Perez.

44
45 Councilmember Perez,



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1 Thank you. I have only about an hour or so of questions. Two questions. Have you
2 looked at other jurisdictions to figure out if there are jurisdictions out there that,
3 notwithstanding the difficulties of hyper inflation in the construction market, et cetera,
4 have managed to get a handle on this and come up with estimates that turn out to be
5 accurate?

6
7 Arthur Holmes,
8 In this it particular exercise, we did not. We did not go outside to other jurisdictions.

9
10 Councilmember Perez,
11 Does that imply you have done that in other contexts?

12
13 Arthur Holmes,
14 This is the first time we have done this kind of an exercise.

15
16 Councilmember Perez,
17 Okay, do you think It might be useful to figure out if there are other jurisdictions that are
18 similar size, similar ilk, that have been able to maneuver this very challenging...

19
20 Arthur Holmes,
21 Certainly, sir. The more you can research, the wider your research, the better, the more
22 variables you get, then the better it's going to be. When I started this, I started it
23 relatively short time ago and so that's...

24
25 Councilmember Perez,
26 Sure. No. I appreciate that. Okay, we'll have to come back at some point in a few
27 months when you've had a chance...

28
29 Arthur Holmes,
30 Oh, that's what I -- the one thing that I said is that this is a transition. We are trying to
31 transition into this thing. There are going to be different things that we will have to
32 change. We are not saying that, today, that's it.

33
34 Councilmember Perez,
35 I appreciate that, and I don't -- and I also understand that there's a lot of things going on
36 right now. But I would -- I would be very interested in learning in a few months about
37 what you've learned and there may be...

38
39 Arthur Holmes,
40 We can do it. We will do that.

41
42 Councilmember Perez,
43 ..."X" County, Florida, or somewhere has figured out a way to do this.

44
45 Council President Leventhal,



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1 If we can get that information during the course of the budget process from OMB with a
2 comparison of relevant counties and how they account for these disparities between
3 projected cost and actual cost that would be helpful to the Council.

4
5 Bruce Johnston,

6 And that's fine and we will do that. But I can also tell you compared to our internal
7 system in the bridges process and the transportation process where we go with the
8 35%, the whole fundamental point of that is to get further along in the design to get a
9 more reliable and a better forecast of the cost by knowing a little bit more about the
10 design. That's the process that we are trying to apply here. I know that we have done
11 that successfully in DPWT for many years and I know that was mimicked, it's done at
12 the state level with transportation projects that way. And I believe that the state even
13 does a similar process with this with their building project as well but we will do some
14 more research.

15
16 Councilmember Perez,

17 Thank you. My second and last question is, where did you get the 35% number from
18 and is it possible that maybe that number is not the right threshold at which to make
19 certain assumptions?

20
21 Bruce Johnston,

22 Well, the 35% design number kind of applies -- it comes from our transportation design
23 process and we have a rather rigorous definition of what happens in -- we have two
24 phases in facility planning: Phase 1 and Phase 2. And in Phase 1, we define certain
25 things. We define perhaps whether a roadway is going to be two lanes, four lanes, six
26 lanes, or some portion of that. We design -- we define various fundamental things about
27 that project. In Phase 2 facility planning, we get a little bit further into design and we
28 identify storm drain systems, in general we identify lengths of curb and gutter and
29 paving and very, very preliminary numbers on construction quantities without having
30 drawn all the design details. And the 35% defines that level of completeness in that
31 industry. That's where it comes from.

32
33 Councilmember Perez,

34 Is that an industry standard?

35
36 Martha Lamborn,

37 But it does not -- not for buildings.

38
39 Councilmember Perez,

40 I'm just wondering why we are doing it too early.

41
42 Unidentified Speaker,

43 For transportation projects.

44
45 Martha Lamborn,



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1 That's not for buildings.

2
3 Bruce Johnston,
4 Right, the same 35% -- there is no corollary in the building design phase for that. It's an
5 entirely different process.

6
7 Glenn Orlin,
8 Phase 1 facility planning is roughly similar to what a POR is for buildings. Phase 2 is
9 roughly similar to somewhere after schematic design for buildings.

10
11 Councilmember Praisner,
12 Mike, is your mic on?

13
14 Councilmember Subin
15 Yeah.

16
17 Councilmember Perez,
18 Okay. Thank you.

19
20 Council President Leventhal,
21 Mr. Subin.

22
23 Councilmember Subin,
24 Just a clarification on the school piece. It is partially true that once certain categories of
25 facilities and certain categories of programs get into the budget, they don't move much.
26 In fact, you can probably sit here today and project out for the next 15 or 20 years
27 where a number of these pieces are going to fall out. And that's because of the
28 interrelationship of a lot of those projects and the fact that, if you hold one up, you are
29 holding a whole line of things up. But when it comes to new schools or new projects
30 that's not necessarily true, and where you have something like Richard Montgomery, I
31 think that the folks in Rockville would be hard pressed to say that that went in on a date
32 certain and stayed there. So the school piece is a lot -- most of the school piece -- and I
33 would concede to Martha, probably 75% of it is not going to be movable, but the school
34 CIP, in terms of scheduling and what has to happen and when and what the impacts are
35 of holding something up is very far different from anything that we do in the County
36 government.

37
38 Martha Lamborn,
39 And Mr. Subin, that's exactly why we didn't even try to insist that one size fits all. We
40 focused on our own that we can control.

41
42 Councilmember Subin,
43 You can keep talking.

44
45 Unidentified Speaker,



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1 [INAUDIBLE]

2
3 Council President Leventhal,
4 Okay. Mrs. Praisner.

5
6 Councilmember Praisner,

7 Well, I think I would say from a follow-up perspective for MFP discussions as we go
8 forward and continue to monitor that I have not heard anyone raise any questions about
9 increasing the contingencies in your estimates based on the complexity of the projects
10 that you are dealing with. I also have not heard anyone argue about the fact that you
11 don't keep the same dollar amount for a project all the way through but that we build in a
12 construction inflation factor and we had conversations about Frederick County's or -- I
13 can't rather which county I mentioned, Talbot or Frederick, that has construction inflation
14 rather than a general inflation and we can have continued conversations about that. I
15 think there is a big difference between a renovation of an existing building and a brand
16 new "We don't know where it's going to go, we don't know what it's going to look like" or
17 it's a one of a kind kind of project. I'm a little uncomfortable that we are making -- I think
18 the renovation projects are more in keeping with some of the school system projects
19 than they may be anything else. And I would hate to see them treated the same way as
20 Glen Echo Park or a detention center or even the Judicial Annex because they are
21 totally different things. The building exists. I think, though, that we have yet to come to
22 closure on how and what we mean by facility planning and what the facility planning
23 PDF mean because in the past, it's been said to us and we said ourselves that facility
24 planning is a time to say go or no-go. And if we are arguing that anything that's in facility
25 planning is not a question of no or no-go then the question becomes, should facility plan
26 be facility planning and partial design before it gets to a stand-alone PDF? And so if
27 that's the case, then facility planning and design is a question of what threshold before it
28 gets its own PDF -- and 35% of 50% or whatever. My problem is I still think we have not
29 come to a clear understanding of what the trigger mechanisms are and what the
30 timetable is once you have finished that work. Martha talked about coming back to us at
31 the CIP cycle if you reach 100% in September, maybe you'll will bring us the project in
32 the cycle for the previous CIP. That's what you said earlier, Martha. And so the question
33 is, does that mean that the only time we see projects are in the CIP cycle? And if not,
34 then is there a magic threshold percentage which you will bring us the project when it
35 reaches that level rather than the CIP cycle calendar? And if it is that magic percentage,
36 whatever it is we determine, then we will see supplementals. We will see projects to
37 move forward or we are sitting on design.

38
39 Arthur Holmes,

40 As I said earlier, it may not answer your question. I think that those are the kinds of
41 things that we are going to have to work towards. Right now, there is a certain set of
42 rules in place and we abide by those rules, but when we look at this particular system, I
43 think that, as we go down the road and look at it, we will more than tweak it. We'll make
44 some changes.



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1 Councilmember Praisner,

2 Right. I understand that, Art. All I'm saying is, though, that unless you're going to tell
3 communities that the percentage is different for different types of projects, we're going
4 to have to come to closure on that issue. That does not mean it's cast in concrete and
5 we can't change it, but we're going to have to come to some closure as to the magic
6 percentage and also how you're going to treat projects that reach that percentage
7 outside of a CIP cycle.

8
9 Arthur Holmes,

10 I would agree with you. The only thing I'm saying is that, if one set of rules would not fit
11 all. You know, you're going to have to have some flexibility in the system and what we
12 have here now are those systems that are pretty much ready. There are some things
13 out in the out years. And we would have to make some decisions as to what are going
14 to be the decision rules for those particular things.

15
16 Councilmember Praisner,

17 If we are talking about design -- facility planning and design being not a question of
18 whether you go or no-go but a question of when you go, or it's a question of you get to a
19 certain point and you decide whether you have a project or not -- those are two different
20 decisions.

21
22 Arthur Holmes,

23 And this we have in here, we were saying, yes, you can look, you can use it. You come
24 back and you could tell us that.

25
26 Beverly Swaim-Staley,

27 Well, I think you also have Dr. Orlin who has come to a very good, I thought,
28 compromise here.

29
30 Arthur Holmes,

31 Go ahead.

32
33 Councilmember Praisner,

34 Well, I'm sorry. You can't tell us that we are not using facility planning to say go/no-go
35 and all of a sudden say, we're going to have a facility planning process that's go/no-go.

36
37 Hamid Omidvar,

38 Ms. Praisner, you brought up two questions. I'll answer the first one. That had to do with
39 the existing projects. Existing projects, the way we do it now, our POR for existing
40 projects is not done much more advanced it includes the building program than a POR
41 for a new building. In that sense, it has more liability, unknown, and contingency to it.
42 We are now concluded that our program of requirement for an existing building needs to
43 go to due diligence engineering and find out what exactly must be done to that building,
44 phasing, [INAUDIBLE] the space, moving people around, components, and fit what area
45 needs to be done exactly, which is closer to almost schematic design, if you will, at the



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1 facility planning before we tackle it because it could cause more problems during the
2 construction if we don't do that.

3
4 Councilmember Praisner,
5 But I think Hamid, with all due respect, you are talking about the Judicial Center and the
6 Executive Office Building, how we've renovated libraries is close them, it's not a
7 question of moving people around. You close the library for the time period while it's
8 being renovated.

9
10 Hamid Omidvar,
11 That's one issue, but the other issue for us is the unknown. The unknown means that
12 what is the expectation of the Division of Maintenance? What is the expectation of those
13 who pay the energy bill. What is the expectation of the user? What do we know and
14 don't know about that facility? Is it 27 years old and the as-built since then have
15 changed so much since then that we don't know what pipes are in what wall, and if you
16 open it up, it adds unknown costs. Those are the things. Yes, we know that
17 Gaithersburg Library, we can make the decision it must be closed before we start
18 renovation. Unfortunately, we may not know everything that's on that building. The
19 moment you open up a wall and find something that's win done, or a security wires
20 that's been put in place, or Lucent some years ago put some telephones in, abandoned
21 it. Those are the types of things and expectations of the user.

22
23 Councilmember Praisner,
24 You're never going to know everything about any building until you open up a wall. But
25 the point is, you want to get as much information and some assumptions ahead of time.
26 I'm going to stop on this issue. I think we've gone on.

27
28 Council President Leventhal,
29 Okay. I want to thank everyone from the Executive branch. This is the first of a lengthy
30 conversation we'll be having about the capital budget. I need to -- so we are done on
31 this matter. Thank you all very, very much. We appreciate it. We have one item of
32 business unresolved from this morning that we need to take care of. I need a motion for
33 the approval of minutes, madam clerk, what are the minutes before us for approval?

34
35 Council Clerk,
36 January 31st.

37
38 Councilmember Knapp,
39 Move approval.

40
41 Councilmember Praisner,
42 Second.

43
44 Council President Leventhal,



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1 Mr. Knapp has moved and Mrs. Praisner has seconded the approval of the minutes for
2 January 31st. Those in favor will signify by raising their hands. It is unanimous among
3 those present. We now need a motion to go into closed session for the purpose of
4 discussing pending litigation against the County.

5
6 Councilmember Perez,
7 Moved
8 Councilmember Subin,
9 Second.

10
11 Council President Leventhal,
12 Mr. Perez has moved and Mr. Subin has seconded a motion to go into closed session to
13 discuss pending litigation. Those in favor will signify by raising their hands. It is
14 unanimous among those presents. The Council will now move into closed session.
15